

2024 No. 433

CONSTITUTIONAL LAW

EDUCATION, WALES

DEVOLUTION

**The Tertiary Education and Research (Wales) Act 2022
(Consequential Amendments) Order 2024**

Made - - - - *25th March 2024*

Coming into force in accordance with articles 1(2) and (3)

The Secretary of State, in exercise of the powers conferred by section 150(1)(a) and (2)(a), and section 157(2)(c) of the Government of Wales Act 2006(a), makes the following Order.

In accordance with section 150(5) of that Act, a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Order 2024.

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is made.

(3) Articles 2(2), 3, 4(2), 4(3)(a), 5 and 6 come into force on the later of—

(a) the day on which section 23 of the Tertiary Education and Research (Wales) Act 2022(b) comes into force, and

(b) the day after the day on which this Order is made.

(4) An amendment or revocation made by this Order has the same extent as the provision amended or revoked.

(a) 2006 c. 32.

(b) 2022 asc 1.

House of Commons Disqualification Act 1975

2.—(1) Part 3 of Schedule 1(a) to the House of Commons Disqualification Act 1975(b) (other disqualifying offices) is amended as follows.

(2) Omit—

“Any member of the Higher Education Funding Council for Wales in receipt of remuneration.”

(3) At the appropriate place insert—

“Any member of the Commission for Tertiary Education and Research in receipt of remuneration.”

Further and Higher Education Act 1992

3. In section 82 of the Further and Higher Education Act 1992(c) (joint exercise of functions), in subsection (3)(a)(d), for “the HEFCW, the Welsh Ministers to the extent that they are discharging their functions under Part 2 of the Learning and Skills Act 2000” substitute “the Commission for Tertiary Education and Research”.

Freedom of Information Act 2000

4.—(1) Schedule 1 to the Freedom of Information Act 2000(e) (public authorities) is amended as follows.

(2) In Part 4, in paragraph 53, for sub-paragraph (2)(c)(f) substitute—

“(c) in paragraph (c)—

(i) the reference to an institution in Wales is to an institution whose activities are carried on, or principally carried on, in Wales, but includes the Open University, and

(ii) “higher education corporation” has the meaning given by section 90(1) of the Further and Higher Education Act 1992, and”.

(3) In Part 6—

(a) omit “The Higher Education Funding Council for Wales.”;

(b) at the appropriate place insert “The Commission for Tertiary Education and Research.”

Counter-Terrorism and Security Act 2015

5. In section 32 of the Counter-Terrorism and Security Act 2015(g) (monitoring of performance: further and higher education bodies), in subsection (5)(b), for “Higher Education Funding Council for Wales” substitute “Commission for Tertiary Education and Research”.

(a) There are amendments to Part 3 of Schedule 1 which are not relevant to this Order.

(b) 1975 c. 24.

(c) 1992 c. 13.

(d) Section 82(3)(a) was amended by S.I. 2005/3238, Schedule 1, paragraph 25(b) and (c); S.I. 2010/1080, Schedule 1, paragraph 24; the Education Act 2011 (c. 21), Schedule 12, paragraph 36(4); the Deregulation Act 2015 (c. 20), Schedule 14, paragraph 39; the Higher Education and Research Act 2017 (c. 29), Schedule 11, paragraph 23(5).

(e) 2000 c. 36.

(f) Paragraph (c) was amended by the Higher Education and Research Act 2017, Schedule 11, paragraph 29(3)(b).

(g) 2015 c. 6; section 32(5)(b) was amended by the Higher Education and Research Act 2017, Schedule 11, paragraph 35.

Higher Education and Research Act 2017

6. In section 113 of the Higher Education and Research Act 2017(a) (joint working), in subsection (3), for paragraph (c), substitute—

“(c) the Commission for Tertiary Education and Research.”

David TC Davies
Secretary of State
Wales Office

25th March 2024

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 150 of the Government of Wales Act 2006 which, among other things, allows the Secretary of State to make provision in consequence of Acts of Senedd Cymru.

The Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”) abolishes the Higher Education Funding Council for Wales (“HEFCW”) and creates the Commission for Tertiary Education and Research (“the Commission”). This Order makes consequential amendments to reflect the new provisions of the 2022 Act.

Article 2 amends the House of Commons Disqualification Act 1975 so that members of the Commission in receipt of remuneration will be disqualified from membership of the House of Commons. Section 1 of the 2022 Act establishes the Commission and section 23 of the 2022 Act provides for the dissolution of HEFCW.

Article 3 amends section 82(3)(a) of the Further and Higher Education Act 1992 (“the 1992 Act”). Section 82(3)(a) of the 1992 Act defines a “relevant authority” for the purposes of the operation of section 82 of the 1992 Act as including “the HEFCW, the Welsh Ministers to the extent that they are discharging their functions under Part 2 of the Learning and Skills Act 2000”. This reference is replaced with a reference to “the Commission for Tertiary Education and Research”. The amendments made to Part 2 of the Learning and Skills Act 2000 by paragraph 14 of Schedule 4 to the 2022 Act mean that the Welsh Ministers will no longer exercise functions under Part 2 of the Learning and Skills Act 2000 for the purposes of section 82 of the 1992 Act.

Article 4 amends Schedule 1 to the Freedom of Information Act 2000 (“the FOIA”). Schedule 1 to the FOIA lists public authorities for the purposes of the FOIA.

Paragraph 53(1)(c) of Schedule 1 to the FOIA lists the governing body of an institution in Wales conducted by a higher education corporation as a public authority for the purposes of the FOIA. Paragraph 53(2)(c) of Schedule 1 to the FOIA states that the reference to an institution in Wales in sub-paragraph (1)(c) is to be construed in accordance with section 62(7) of the 1992 Act. Section 62 of the 1992 Act is to be repealed by paragraph 6(3)(b) of Schedule 4 to the 2022 Act. Article 4 amends paragraph 53(2)(c) so that a reference to an institution in Wales is to an institution whose activities are carried on, or principally carried on, in Wales, but includes the Open University.

Article 4 also amends Part 6 of Schedule 1 to the FOIA by adding the Commission to the list of public authorities for the purposes of the FOIA and removing the reference to HEFCW from that list.

Article 5 amends section 32(5)(b) of the Counter-Terrorism and Security Act 2015 (“the 2015 Act”). Section 32 of the 2015 Act makes provision about the monitoring of the performance of further and higher education bodies in discharging their duty to prevent people from being drawn

(a) 2017 c. 29.

into terrorism (as provided at section 26(1) of the 2015 Act). Monitoring is undertaken by a “monitoring authority” which is defined at section 32(4) as the Secretary of State, or the person to whom that function is delegated by the Secretary of State. Section 32(5)(b) provides that such delegation must be made by giving notice in writing to the person to whom the delegation is made if that person is the Office for Students or the HEFCW, and the function is delegated in relation to relevant higher education bodies. Article 5 replaces the reference to HEFCW in section 32(5)(b) of the 2015 Act with a reference to the Commission.

Article 6 amends section 113 of the Higher Education and Research Act 2017 (“the 2017 Act”). Section 113 of the 2017 Act makes provision about joint working arrangements between “relevant authorities”. A “relevant authority” is defined in section 113(3) and includes, at paragraph (c), HEFCW. Article 6 replaces the reference to HEFCW in section 113(3)(c) of the 2017 Act with a reference to the Commission.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.